IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO.850 OF 1995
IN
WRIT PETITION NO.1798 OF 1995

1. The Maharashtra Housing and Area Development Authority, Statutory Body Incorporated under the provisions of Maharashtra Housing and Area Development Act, 1976 and having its registered office at Griha Nirman Bhavan, Bandra (East), Bombay-400 051.

2. The Bombay Housing and Area Development Board, A Regional Unit of Maharashtra Housing and Area Development Authority, a Body Corporate and constituted under the provisions of Maharashtra Housing and Area Development Act, 1975 and having its registered office at Griha Nirman Bhavan, Bandra (E), Bombay-51.

3. The Estate Manager-V, Bombay Housing and Area Development Board, having his office at Griha Nirman Bhavan, Bandra (E), Bombay-51. ..Appellants

v/s.

1. Bombay Housing and Area Development Board Contractors' Association, an Unregistered Association, having its office at Room No.347, 2nd floor, Griha Nirman Bhavan, Bandra (East), Bombay-400 051.

2. Pradeep Gajanan Nagawekar, Partner of M/s. Paresh Construction, a member and present President of Bombay Housing and Area Development Board Contractors' Association, an unregistered Association, having its office at 347, Griha Nirman Bhavan, 2nd Floor, Bandra (East), Bombay-400 051.

3. Pralhad B. Narsinghani, Proprietor of M/s. P.B.Narsinghani, Member and present Vice-President of Bombay Housing and Area Development Board Contractors' Association, an unregistered Association having its

office at 347, Griha Nirman Bhavan,
2nd Floor, Bandra (East),
Bombay-400 051.

4. Ramesh Bhatia,
Propriator of M/s. ABC Construction,
Member (and presently Secretary) of
Bombay Housing and Area Development
Board Contractors' Association, an
unregistered Association having its
office at 347 Griha Nirman Bhavan,
2nd Floor, Bandra (East),
Bombay-400 051.

5. Kamlesh Shahani,
Proprietor of Kamlesh Enterprises,
member (and present Jt.Secretary) of
Bombay Housing and Area Development
Board Contractors' Association, an
unregistered Association, having
its office at 347, Griha Nirman
Bhavan, 2nd Floor, Bandra (East),
Bombay-400 051.

6. Keshavjibhai Kenia,
Proprietor of M/s. Shah Electricals
and Engineering Works,
Member (and presently Treasurer) of
Bombay Housing and Area Development
Board Contractors' Association, an
unregistered Association having its
office at 347, Griha Nirman Bhavan,
2nd Floor, Bandra (East),
Bombay-400 051.

7. Gulab Vaswani,
Propriator of M/s. 3 ACES
Engineering Construction Co.,
Member of Bombay Housing and Area
Development Board Contractors'
Association, having its
office at 347 Griha Nirman Bhavan,
2nd Floor, Bandra (East),
Bombay-400 051.

8. Mr.Hasmukh Seth,
The Ex-president of Bombay Housing
and Area Development Board Contractors'
Association having his office at 347,
Griha Nirman Bhavan, 2nd floor,
Bandra (East), Bombay-400 051.

9. The Competent Authority-I,
Under the Maharashtra Housing and
Area Development Authority, having
its office at Griha Nirman Bhavan,
Bandra (East), Bombay-400 051.

10. The Appellate Oficer-II,
Under the Maharashtra Housing and
Area Development Act, 1976, having
his Office at Griha Nirman Bhavan,
Bandra (East), Bombay-400 051. ..Respondents

Mr.S.G.Surana for appellants.

Mr.Devendra Singh i/by Mr.K.N.Bhandary for respondent Nos.1 to 7.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 9th September, 2004

ORAL JUDGMENT (Per R.M.Lodha, J.)

Heard.

2. Room No.347 on the second floor of Griha Nirman Bhavan was allotted to the first respondent for the office of the B.H. & A.D. Board Contractors' Association vide allotment letter dated 25th May, 1981. The said allotment letter dated 25th May, 1981 reads thus-

"BOMBAY HOUSING AND AREA DEVELOPMENT BOARD

(A Regional Unit of Maharashtra Housing and
Area Development Authority)

Phones:538351/35
538411/15

GRIHA NIRMAN BHAVAN
BANDRA (EAST),
BOMBAY-400 051.

No.DB/70/7448/BB-E of 81 Date: 25.5.81.

To:
The President,
B.H & A.D. Board Contractors' Association
C/o.P.Rasiklal & Co.,
113, Arun Bazar, Station Road,
Santacruz (West),
Bombay-400 054.

Sub: Allotment of Accommodation for the
office of Contractors' Association.

Sir,

This is to inform you that it has been decided to allot an office accommodation admeasuring 275 sq.ft. in Room No.347 on 2nd floor of Griha Nirman Bhavan, for the office of your Association on monthly rent at rate of economic rent plus usual service charges.

Further, it may be noted that this allotment is of purely temporary nature and the Association will have to vacate as and when required by the Board/Authority.

For all other details you are requested to contact the Estate Manager (V) on 1st floor of this building and arrange to take the possession of the premises.

Yours faithfully,
Sd/-
For Chief Engineer,
B.H. & A.D.Board,Bombay."

3. The first respondent was informed to execute the necessary tenancy agreement in respect of the subject premises vide communication dated 17th January, 1983. The said communication dated 17th January, 1983 reads thus-

"PROVISIONAL: No.CB/Allot/CAOB/189
Office of the Estate Manager(V),
Bombay Housing & Area Development
Board, Griha Nirman Bhavan,
Bandra (E), Bombay-51,
Dated: 17.1.83.

To:
The President,
B.H. & A.D.Board Contractor's Association,
Griha Nirman Bhavan, 2nd floor,
Bandra (East), Bombay-400 051.

Sub: Allotment of accommodation for the
office of Contractor's Association.

Sir,

In connection with the above, I have to inform you that you have been allotted an area of 275 Sft. on 2nd floor of Griha Nirman Bhavan w.e.f. 1.6.81 on purely on temporary basis on provisionally monthly rent of Rs.687.50 plus service charges of Rs.82.50 i.r. total Rs.770.00 P.M.

You are requested to attend this office alongwith following requisite amount and execute necessary tenancy agreement on or before 25.1.83 on any working day except 2nd Saturday and Sunday.

1. Rs.15,400.00	Towards rent and service charges from 1.6.81 to 31.1.83.
2. Rs. 4,620.00	Permanent Deposit.
3. Rs. 924.00	Stamp Duty.
Rs. 20,944.00	

This allotment is subject to the rules and regulations framed by the Bombay Housing and Area Development Board from time to time and by the Govt. in respect of Board's properties.

The premises allotted to you on purely temporary nature with a condition that you will have to vacate the premises as and when required by the Board/Authority without any representation for alternative accommodation.

The premises should be used only for a office of the B.H. & A.D. Board Contractor's Association.

You will have no right to transfer the premises to any other Institution.

You shall be responsible for getting separate electric meter and telephone.

The monthly rent and service charges should be paid regularly in advance in the first week of every month.

You will have to pay increased rent as and when Municipal tax and service charges from time to time increased.

Yours faithfully,
Sd/-
Estate Manager (V),
B.H. & A.D.Board, Bombay."

4. It appears that by the notice dated 20th May, 1987, the appellant called upon the first respondent to vacate the subject premises. The first respondent was informed that the new accommodation will be allotted to the first respondent in one of the temporary structures in the compound of the central administrative office building. The matter remained in cold storage for about seven years and then again vide letter dated 2nd June, 1994, the appellants asked the first respondent to hand over the possession of the subject premises. The first respondent filed the suit in the City Civil Court challenging the action of the appellants in directing the first respondent to hand over the possession of the subject premises. The suit filed by the first respondent was disposed of by directing the appellants to follow due process of law in evicting the first respondent. The appellants then initiated proceedings for eviction against the first respondent under section 66 of the Maharashtra Housing and Area Development Act, 1976 (for short "Act of 1976"). The eviction order came to be passed by the competent authority on 3rd April, 1995. Aggrieved thereby, the first respondent preferred appeal which was allowed and the eviction order was set aside. The present appellants preferred writ petition before this court which came to be dismissed by the learned Single Judge

vide order dated 6th October,1995. The present appeal is directed against the said judgment.

5. Having perused section 66 of the Act of 1976 and the facts of the present case, it is clear that none of the grounds available under section 66 for eviction of respondent No.1 was made out. The first respondent, admittedly, came in possession of the subject room way back in the year 1981. The respondent No.1 was called upon to vacate the subject premises vide communication dated 20th May, 1987. The respondent No.1 did not vacate the said premises. No steps were taken by the appellants in getting the said premises vacated from the first respondent pursuant to the communication dated 20th May, 1987. Almost seven years thereafter another letter was sent by the appellants to the first respondent for vacation of the subject premises. The said action was challenged by the first respondent by filing suit and the appellants were directed to follow due process of law. By such permission, it was not meant that at ipse dixit of the first appellant the eviction of first respondent could be sought. None of the grounds under section 66 of the Act of 1976 was satisfied. In the circumstances, the appellate authority cannot be said to have erred in setting aside the order of the competent authority.

6. We do not find any infirmity in the order of the learned Single Judge in upholding the decision of the appellate authority. No case for interference is made out in the appeal. Appeal is dismissed.

No costs.

7. If a ground for eviction in law is made out against the first respondent, obviously, the impugned order shall not come in the way of the present appellants in prosecuting the appropriate remedy against the first respondent.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)